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OP-ED CONTRIBUTOR

The Deciding Vote

By DALTON CONLEY

THE Democrats may or may not capture the House or Senate tomorrow. But one thing appears certain: There will be a lot of close races where the results are uncertain late into the night (and perhaps even the next morning) and where the outcome may hinge on legal rulings about which ballots count and which don't.

After all, in the last few years, several statistical dead-heat elections have ended up in court. The mayoralty of San Diego and the governorship of Washington are just two of the more high-profile examples since *Bush v. Gore* in 2000 in which elections were decided by a few votes and controversy followed the winner into office.

The rub in these cases is that we could count and recount, we could examine every ballot four times over and we'd get — you guessed it — four different results. That's the nature of large numbers — there is inherent measurement error. We'd like to think that there is a "true" answer out there, even if that answer is decided by a single vote. We so desire the certainty of thinking that there is an objective truth in elections and that a fair process will reveal it.

But even in an absolutely clean recount, there is not always a sure answer. Ever count out a large jar of pennies? And then do it again? And then have a friend do it? Do you always converge on a single number? Or do you usually just average the various results you come to? If you are like me, you probably settle on an average. The underlying notion is that each election, like those recounts of the penny jar, is more like a poll of some underlying voting population.

In an era of small town halls and direct democracy it might have made sense to rely on a literalist interpretation of "majority rule." After all, every vote could really be accounted for. But in situations where millions of votes are cast, and especially where some may be suspect, what we need is a more robust sense of winning. So from the world of statistics, I am here to offer one: To win, candidates must exceed their rivals with more than 99 percent statistical certainty — a typical standard in scientific research. What does this mean in actuality? In terms of a two-candidate race in which each has attained around 50 percent of the vote, a 1 percent margin of error would be represented by 1.29 divided by the square root of the number of votes cast.

Let's take the Washington gubernatorial race in 2004 as an example. After a manual recount, Christine Gregoire was said to have 1,373,361 votes, 48.8730 percent, while her Republican rival, Dino Rossi, garnered 1,373,232, or 48.8685 percent (a third-party candidate got 63,465 votes). That's a difference of only 129 votes, or .0045 percent. The standard error for a 99 percent certainty level was 0.078 percentage points. Since Ms. Gregoire's margin of victory didn't exceed this figure, under this system she wouldn't be certified

as the victor.

If we apply the same methodology to Bush v. Gore in 2000, the results are equally ambiguous. The final (if still controversial) vote difference for Florida was 537 (or .009 percent). Given Florida's vote count of 5,825,043, (excluding third party votes) this margin fails to exceed the 99 percent confidence threshold. New Mexico, which Al Gore won by 366 votes out of a much smaller total, is also up for grabs in this situation.

So what should we do in such cases, where no winner can be declared with more than 99 percent statistical certainty? Do the whole shebang all over again. This has the advantage of testing voters' commitment to candidates. Maybe you didn't think the election was going to be as close as it was, so you didn't vote. Well, now you get a second chance.

And if there were hanging chads (as in Florida in 2000) or unshaded bubbles (as in the 2004 San Diego mayoral race) or dubiously included or excluded ballots, voters could make extra sure to do it right the second time round.

Yes, it costs more to run an election twice, but keep in mind that many places already use runoffs when the leading candidate fails to cross a particular threshold. If we are willing to go through all that trouble, why not do the same for certainty in an election that teeters on a razor's edge? One counter-argument is that such a plan merely shifts the realm of debate and uncertainty to a new threshold — the 99 percent threshold. However, candidates who lose by the margin of error have a lot less rhetorical power to argue for redress than those for whom an actual majority is only a few votes away.

It may make us existentially uncomfortable to admit that random chance and sampling error play a role in our governance decisions. But in reality, by requiring a margin of victory greater than one, seemingly arbitrary vote, we would build in a buffer to democracy, one that offers us a more bedrock sense of security that the "winner" really did win.

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